

RECORDATION NO. 23255-D FILED

JAN 31 '01 10-41 AM  
TS  
SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
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WASHINGTON, D.C.  
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ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

January 30, 2001

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Rail Car Use Agreement, dated as of June 1, 1999, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Equipment Lease and Collateral Assignment which were previously filed with the Board under Recordation Numbers 23255 and 23255-A.

The names and addresses of the parties to the enclosed document are:

Lessor: Kasgro Leasing, LLC  
(f/k/a OPM Services, Inc.)  
320 East Cherry Street  
New Castle, PA 16102

Lessee: Vogt-Nem, Inc.  
400 Dupont Circle  
Louisville, KY 40207

A description of the railroad equipment covered by the enclosed schedule is:

three (3) railcars LNAL 70931, 70932 and 70933

Mr. Vernon A. Williams  
January 30, 2001  
Page Two

A short summary of the schedule to appear in the index follows:

Rail Car Use Agreement between Kasgro Leasing, LLC, Lessor,  
and Vogt-Nem, Inc., Lessee covering three (3) railcars LNAL 70931,  
70932 and 70933.

Also enclosed is a check in the amount of \$27.00 payable to the order of the  
Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Alvord", with a stylized flourish at the end.

Robert W. Alvord

RWA/anm  
Enclosures

**RAIL CAR USE AGREEMENT**

JAN 31 '01

10-41 AM

**SURFACE TRANSPORTATION BOARD**

THIS RAIL CAR USE AGREEMENT ("Agreement") is made as of June 1, 1999, between OPM SERVICES, INC. ("OPM"), and VOGT-NEM, INC. ("VOGT").

**RECITALS:**

WHEREAS, OPM is the manager of a fleet of heavy duty railroad marked 8-axle FM flat cars ("Rail Cars") for shipping goods and material;

WHEREAS, VOGT has a need for a certain number of Rail Cars to be available primarily for their exclusive use for prompt delivery of goods and equipment to their customers in a timely fashion; and

WHEREAS, the parties hereto intend to provide for the use of Rail Cars in accordance with the terms and provisions of this Agreement.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties agree as follows:

1. **Term.**

(a) Unless earlier terminated as provided herein, the term of this Agreement ("Term") shall be two years, commencing on the date hereof. Thereafter, the Agreement may be extended by VOGT for (and the Term shall include) two successive one-year terms by giving three months prior written notice of extension to OPM.

(b) In the event the option to extend under Section 1(a) is not exercised by VOGT for two successive one-year extensions, then OPM shall serve as VOGT's primary source of heavy duty flat cars for the two-year period following termination by giving OPM reasonable notice and the first opportunity to supply such cars when needed by VOGT.

(c) Either party may terminate this Agreement upon the material breach of this Agreement by the other party, provided the breaching party shall have a 60-day period to cure such breach on notice of the same by the non-breaching party.

2. **Use of Rail Cars.**

(a) VOGT shall cause the Rail Cars to be used (each use, a "Use") in the aggregate a minimum of 91 Uses for the period ending August 31, 2000 and for each subsequent year a minimum of 98 Uses (the "Yearly Minimum"). Upon inception of this Agreement, OPM shall provide availability of four (4) 8-axle FM Rail Cars and as of September 1, 1999 provide an additional ten (10) 8-axle FM Rail Cars. Within a period of 120 days all cars furnished will be cars with a 70' loading deck.

(b) In the event VOGT's aggregate Uses for any 12-month period of the Term is less than the Yearly Minimum, then VOGT shall pay OPM an amount which equals the Yearly Minimum less VOGT's aggregate Uses for such 12-month period, multiplied by the sum of: the tariff use charge plus the average per load origin and destination detention of all Rail Cars for such 12-month period.

(c) By VOGT's written notice to OPM, Rail Cars may be released to OPM, and OPM shall use reasonable efforts to re-market released Rail Cars. VOGT shall receive credit towards the applicable Yearly Minimum for any loadings of such released Rail Cars. VOGT shall also receive credit for loads by NEM when using cars covered by this agreement.

(d) VOGT may increase the number of Rail Cars subject to this Agreement upon 60 days prior written notice to OPM.

(e) Upon adequate prior notice to VOGT and with the permission of VOGT, OPM may substitute similar type and capacity Rail Cars for use by VOGT.

3. **Payment for Use.** As consideration for providing Rail Cars for VOGT's use as provided herein, OPM shall be entitled to receive payment in amount(s) and payable at such time(s) as determined in accordance with Item 683 of Railway Tariff RPS 6740F, as attached hereto and incorporated by reference herein, as may be amended from time to time.

4. **Miscellaneous.**

(a) **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been given (i) on the date of delivery personally, (II) on deposit in the United States mail, postage prepaid by registered or certified mail, return receipt requested, (iii) on delivery to an overnight courier, costs prepaid, or next day delivery, or (iv) faxed to the number listed below with a hard copy follow-up to the appropriate party at the following address (or at such other address as shall hereafter be designated by one party to the other party by notice given in accordance with this Section):

To OPM: OPM Services, Inc.  
1000 W. Ormsby Avenue, Suite 215  
Louisville, KY 40210  
Attn: Harry Ketterman FAX 812-347-3559  
cc: Chuck Woods

To VOGT VOGT-NEM, Inc..  
4000 Dupont Circle, Suite 400  
Louisville, KY 40207  
Attn: Thomas C. Harmon FAX 502-899-4690  
cc: Chris Johnson

(b) **Severability: Waiver.** If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest

extent permitted by law. Failure of either party to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

(c) Benefit Assignment. The covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the parties and their permitted successors and assigns. Either party may assign its interest hereunder upon the prior written consent of the other party.

(d) Further Assurances. Each party shall execute such instruments and take such other action as shall be reasonably requested by the other in order to effect the transactions contemplated herein.

(e) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with the substantive laws of the Commonwealth of Kentucky.

(f) Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and completely supersedes all prior agreements between the parties, whether oral or written. All other agreements with respect to the subject matter hereof between the parties, whether oral or written, are merged herein. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

OPM SERVICES, INC.

By: 

Title: VP - Capt & Marketing 6-1-98

VOGT-NEM, INC.

By:  6-1-99

Title: CFO

ADDENDUM #1

RAIL CAR USE AGREEMENT DATED FEB. 19, 1999  
Between OPM Services, Inc. & Nooter/Eriksen, Inc.

Item No. 2 of Original Agreement - Use of Rail Cars.

Add - (b) An additional 5 cars are to be added to this agreement effective September 1, 1999 for a term of 3 years subject to all conditions of the original agreement. These five cars will add 35 uses to the minimum yearly uses (11 uses for the balance of 1999 and 35 for each additional 12 month period ) For cars furnished above the fifteen prior to the start date of this addendum, Nooter/Eriksen will be given credit for such uses toward the yearly minimum.

With the addition of these 5 cars the minimum yearly uses are as follows:

- 1999 — 106 total uses
- 2000 — 140 total uses
- 2001 — 140 total uses
- 2002 — Will be prorated depending on the number of cars Nooter/Eriksen keeps under this agreement.

All other terms and conditions remain the same.

OPM RAIL SERVICES, INC.

By: [Signature]

Title: President

Date: June 24, 1999

NOOTER/ERIKSEN, INC.

By: [Signature]

Title: MGR. PURCH. & TRANSPORTATION

Date: 7-1-99

08/14/00 MON 11:20 FAX 502 562  
FROM : HARRY KETTERMAN

Reed Weitkamp  
PHONE NO. : 812 347 3559

Aug. 09 2000 11:09AM P2

004

### ACKNOWLEDGMENT, CONSENT AND RELEASE

Pursuant to the terms of that certain Railroad Car Use Agreement dated June 1, 1999 (the "Agreement") between Vogt-Nem, Inc. ("Vogt-Nem") and OPM Services, Inc. ("OPM Services"), Vogt-Nem, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, does hereby acknowledge and fully and completely authorize, approve and consent to each of the following: (i) the execution, delivery and performance by OPM Services, as assignor, and Kasgro Leasing, LLC, a Pennsylvania limited liability company ("Kasgro Leasing"), as assignee, of an Assignment and Assumption Agreement ("Assignment") pursuant to which OPM Services will sell, assign, transfer and convey to Kasgro Leasing all of its right, title and interest in and to the Agreement and Kasgro Leasing will accept, assume and agree to perform and be bound by all of the obligations, responsibilities and covenants arising thereunder, and (ii) the transfer and conveyance by OPM Flats, Inc. to Kasgro Leasing of its entire general partner interest in and to Power Flats, Ltd., a Kentucky limited partnership, and all rights relating to or arising by reason of such general partner interest.

Vogt-Nem does hereby fully release and forever discharge OPM Services and its officers, directors, shareholders, employees, agents, and affiliates from all duties, obligations, responsibilities, covenants and liabilities arising under or pursuant to the Agreement, such discharge and release to be effective immediately upon the execution and delivery of the Assignment; provided, however, that this release shall not apply to claims arising from actions, omissions, breaches or defaults on the part of OPM Services which occurred prior to the effective date of this release.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Acknowledgment, Consent and Release as of this 8<sup>th</sup> day of August, 2000.

VOGT-NEM, INC.

By: [Signature] *Thomas C. Horner*

Title: CFO

PROSODYFF Power Plant Kasgro Leasing - 08/14/00

502 562 2200

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**ACKNOWLEDGMENT, CONSENT AND RELEASE**

Pursuant to the terms of that certain Railroad Car Use Agreement dated June 1, 1999 (the "Agreement") between Vogt-Nem, Inc. ("Vogt-Nem") and OPM Services, Inc. ("OPM Services"), Vogt-Nem, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, does hereby acknowledge and fully and completely authorize, approve and consent to each of the following: (i) the execution, delivery and performance of OPM Services, as assignor, and Kasgro Leasing, LLC, a Pennsylvania limited liability company ("Kasgro Leasing"), as assignee, of an Assignment and Assumption Agreement ("Assignment") pursuant to which OPM Services will sell, assign, transfer and convey to Kasgro Leasing all of its right, title and interest in and to the Agreement and Kasgro Leasing will accept, assume and agree to perform and be bound by all of the obligations, responsibilities and covenants arising thereunder, (ii) the transfer and conveyance by OPM Plats, Inc. to Kasgro Leasing of its entire general partner interest in and to Power Plats, Ltd., a Kentucky limited partnership, and all rights relating to or arising by reason of such general partner interest, and (iii) the collateral assignment by Kasgro Leasing to Transamerica Equipment Financial Services Corporation ("Transamerica") of all of Kasgro Leasing's right, title and interest in and to the Agreement. Vogt-Nem acknowledges that in the event of Kasgro Leasing's default under its agreement with Transamerica, Transamerica (or its agents or assigns) may, but is not obligated to, assume Kasgro Leasing's rights and obligations under the Agreement (provided, however, that in the absence of such assumption, Vogt-Nem agrees that Transamerica shall not be liable for any of the duties of Kasgro Leasing under the Agreement). Vogt-Nem agrees that such collateral assignment shall not give rise to any duties or obligations on the part of Transamerica to Vogt-Nem.

Vogt-Nem does hereby fully release and forever discharge OPM Services and its officers, directors, shareholders, employees, agents, and affiliates from all duties, obligations, responsibilities, covenants and liabilities arising under or pursuant to the Agreement, such discharge and release to be effective immediately upon the execution and delivery of the Assignment; provided, however, that this release shall not apply to claims arising from actions, omissions, breaches or defaults on the part of OPM Services which occurred prior to the effective date of this release.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Acknowledgment, Consent and Release as of this 21<sup>st</sup> day of September, 2000.

VOGT-NEM, INC.

By: [Signature]

Title: CFO

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TOTAL P. 01

SEP 26 '00 03:23PM PT

PHONE NO. : 812 347 3539

FROM : HARRY KETTERMAN

SEP 26 '00 15:21

724 658 7639

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## **ADDENDUM TO RAILROAD CAR USE AGREEMENT**

The following is an addendum to an original rail car use agreement signed on June 1, 1999, between KASGRO LEASING, LLC. - New Castle, PA and VOGT NEM - Sapulpa, OK.

This addendum, dated August 21, 2000, identifies the following cars as a part of the original agreement and/or any and all prior addendum, with all terms and conditions to remain as stated in the original agreement.

LNAL 70931  
LNAL 70932  
LNAL 70933

## USE AGREEMENT CERTIFICATION

On this 19<sup>th</sup> day of January, 2001, I **Harry Kettermann**, **President** of Kasgro Leasing, LLC, formerly known as OPM Services, Inc., does hereby certify that the use agreement dated June 1, 1999, by and between Vogt-Nem, Inc, and OPM Services, Inc., now known as Kasgro Leasing LLC, are true and accurate copies.

KASGRO LEASING, LLC

By:

  
Harry Kettermann, President

STATE OF Indiana )  
COUNTY OF Harrison )

ss:

On this 19 day of January, 2001, before me personally appeared **Harry Kettermann** to me personally known, who, being duly sworn, did say that he is President of Kasgro Leasing, LLC, formerly known as OPM Services, Inc., and that the foregoing instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that execution of the foregoing instrument was the free act and deed of such corporation.

NOTARY PUBLIC:



MY COMMISSION EXPIRES: 5/23/08